

# INTRODUCTION TO ENVIRONMENTAL LAW FALL 2005

VOLUME II

Prof. Andrew Green

BORA LASKIN LAY LIBRARY

AUG 2 6 2005

FACULTY OF LAW

WHEVERSITY OF TORONTO

## INTRODUCTION TO ENVIRONMENTAL LAW

FALL 2005

VOLUME II

Prof. Andrew Green



https://archive.org/details/introductiontoen02gree

#### ENVIRONMENTAL LAW

#### FALL 2005

Professor Andrew Green 416-946-8333 Falconer 303 a.green@utoronto.ca

## TABLE OF CONTENTS

#### I THE PROBLEM AND APPROACHES

D. Boyd, <i>Unnatural Law: Rethinking Canadian Environmental Law and Policy</i> (Vancouver: UBC Press, 2003), Ch. 1: "Canada's Environmental Record
K. Harrison and W. Antweiler, "Incentives for Pollution Abatement: Regulation, Regulatory Threats and Non-Governmental Pressures" (2003) 22(3) J. Policy Analysis and Management 361 [Excerpt]
G. Hardin, "The Tragedy of the Commons" (1968) 162 Science 1243 [Excerpt]19
R. Coase, <i>The Firm, The Market, and The Law</i> (Chicago: University of Chicago Press, 1988), Ch. 5: "The Problem of Social Cost" [pp. 95-104, 114-119]
Aldo Leopold, <i>A Sand County Almanac</i> (New York: Oxford University Press, 1966) [pp. 217- 241]
C. Stone, "Should Trees have Standing? – Towards Legal Rights for Natural Objects" (1972) 45 Southern Cal. L.R. 450 [Title page, pp. 458-481]
C. Giagnocavo and H. Goldstein, "Law Reform or World Re-form: The Problem of Environmental Rights" (1990) 35 McGill L.J. 345 [pp. 375-386]
"2005 Environmental Sustainability Index: Benchmarking National Environmental Stewardship", Yale Center for Environmental Law and Policy, Center for International Earth Science Information Network, Columbia University (formally released in Davos, Switzerland, at the annual meeting of the World Economic Forum on Friday, 28 January 2005) [pp.27-35]
"Taking Stock: 2002 North American Pollutant Releases and Transfers", Commission for Environmental Cooperation of North America. [pp. 106-111, 121-123]

# II COMMON LAW

J. Benedickson, <i>Environmental Law (2d)</i> (Toronto: Irwin Law, 2002), Ch. 5: "Civil Liability for Environmental Harm"
McKie v. The K.V.P. Co., [1948] O.R. 398 (Ont. High Ct.)
McKie v. The K.V.P. Co., [1949] 1 D.L.R. 39 (Ont. C.A.)
<i>The K.V.P. Co. v. McKie</i> , [1949] S.C.R. 698
British Columbia v. Canadian Forest Products Ltd., 2004 SCC 38 [Excerpt]109
F. Ackerman and L. Heinzerling, <i>Priceless</i> (New York: The New Press, 2004) [pp. 153-165]
Class Actions
Hollick v. Toronto (City) (2001), 42 C.E.L.R. (N.S.) 26 (S.C.C.)
Pearson v. Inco Ltd. (2002), 33 C.P.C. (5 <sup>th</sup> ) 264 (Ont. Sup. Ct. J.)
Pearson v. Inco Ltd. (2004), 44 C.P.C. (5 <sup>th</sup> ) 276 (Ont. Sup. Ct. J., Div. Ct.)
T. Camus, "Sydney Families File \$1-billion Suit" Halifax Herald (March 25, 2004)173
T. Collier MacDonald. "Another 80 People to Join Lawsuit" Cape Breton Post (August 30, 2003)
Statutory Reforms
Environmental Bill of Rights, S.O. 1993, c. 28, s. 84
III CONSTITUTIONAL JURISDICTION
Theory R. Revesz and R. Stavins, "Environmental Law and Policy" for A.M. Polinsky and S. Shavell, eds., The Handbook of Law and Economics (Amsterdam: North-Holland/Elsevier Science, 2004) [pp. 56-61]
D. Esty, "Revitalizing Environmental Federalism" (1996) 95(3) Mich. L.R. 570 [Excerpts]

#### Federal/Provincial Relations

Harrison, "Federal-Provincial Relations and the Environment: Unilateralism, Collaboration and Rationalization" in D. VanNijnatten and R. Boardman, eds., <i>Canadian Environmental Policy: Context and Cases</i> (Toronto: Oxford University Press, 2001), p. 123.
R. v. Crown Zellerbach Canada Ltd. (1988), 49 D.L.R. (4 <sup>th</sup> ) 161 (S.C.C.) [pp. 161-77, 183-89, 193-196, 200-4]
R. v. Hydro Quebec (1997),151 D.L.R. (4 <sup>th</sup> ) 32 (S.C.C.) [pp. 32-36, 43-44, 56-61, 63-64, 67-69, 71-76, 77-79, 96-102, 113-6]
Local Government
114957 Canada Ltee. v. Hudson (Town) (2001), 200 D.L.R. (4 <sup>th</sup> ) 419 [pp. 419-27, 432-445]
Croplife Canada v. Toronto (City), [2005] O.J. No. 1896
Aborginal
T. McClenaghan, "Why Should Aboriginal Peoples Exercise Governance Over Environmental Issues" (2002) 51 UNB LJ 211
Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73 <b>297</b>
Taku River Tlingit First Nation v. British Columbia, 2004 SCC 74316
IV REGULATORY APPROACH
Overview
J. Benedickson, <i>Environmental Law (2d)</i> (Toronto: Irwin Law, 2002), Ch. 6: "Environmental Regulations and Approvals"
Standards
D. Boyd, Unnatural Law: Rethinking Canadian Environmental Law and Policy (Vancouver: UBC Press, 2003), Ch. 3.3: "Air Pollution"
K. Arrow, et al., "Is There a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation?" (1996) 272 Science 221

F. Ackerman and L. Heinzerling, <i>Priceless</i> (New York: The New Press, 2004) [pp. 35-40; 66-75]
C. Sunstein, <i>Risk and Reason</i> (Cambridge: Cambridge University Press, 2002), Ch. 5: "Reducing Risks Rationally" [pp. 99-113, 120-132]
D. Farber, "From Here to Eternity: Environmental Law and Future Generations" (2003) 2 U. Ill. L.R. 289 [pp. 289-308]
D. Dana, "A Behavioral Economic Defense of the Precautionary Principle" (2003) 97  Nw. U.L.R. 1315 [pp.1315-1320, 1327-1335]
ECO Report, Keep the Door to Environmental Protection Open (Special Report to the Legislative Assembly of Ontario, 1996)
D. Macdonald, "The Business Response to Environmentalism" in D. VanNijnatten and R. Boardman, eds., <i>Canadian Environmental Policy: Context and Cases</i> (Toronto: Oxford University Press, 2001) [pp. 74-75, 79-81]
External Advisory Committee on Smart Regulation, Smart Regulation: A Regulatory Strategy for Canada (September 2004) [14-69]
Approvals and Orders
J. Benedickson, <i>Environmental Law (2d)</i> (Toronto: Irwin Law, 2002), Ch. 7: "Administrative Compliance Mechanisms"
ECO Report, <i>The EBR Litigation Rights: A Survey of Issues and Six Year Review</i> (Background Paper for EBR Litigation Rights Workshop, 2000) [pp. 1-12]474
Re 724597 Ontario Ltd., Re (1994), 13 C.E.L.R. (N.S.) 257 (O.E.A.B.)
Dillon et al. v. Director, MOE (2002), 45 C.E.L.R. (N.S.) 9 (O.E.R.T.)
Prohibitions and Prosecutions
D. Boyd, <i>Unnatural Law: Rethinking Canadian Environmental Law and Policy</i> (Vancouver: UBC Press, 2003), Ch. 2.2: "Water Pollution"
ECO, Annual Report 2000/02, [Excerpts]550
R. v. MacMillan Bloedel (Alberni) Ltd. (1979), 47 C.C.C. (2d) 118 (B.C.C.A.) <b>563</b>

22]
Fletcher v. Kingston (City) 2004 CarswellOnt 1860 (Ont. C.A.)
R. v. Inco (2001), 54 O.R. (3d) 495
R. v. Imperial Oil (2000), 36 C.E.L.R. (N.S.) 109 (B.C.C.A.)
R. v. Bata Industries Ltd. (1992), 9 O.R.(3d) 329 (Prov. Div.)
R. v. Bata Industries Ltd (1995), 25 O.R. (3d) 321 (C.A.)
Bill 133 Environmental Enforcement Statute Law Amendment Act, S.O. 2005, c. 12, ss.1
R. v. BHP Diamonds Inc. 2003 W.C.B.J. 2560, 56 W.C.B. (2d) 278
B. Pardy, Applying the Precautionary Principle to Private Persons: Should it Affect Civil and Criminal Liability? (2002) 43 C. de D. 63
Public Participation
C. Sunstein, <i>Risk and Reason</i> (Cambridge: Cambridge University Press, 2002), Ch. 4: "This Month's Risk"
B.C. (Minister of Forests) v. Okanagan Indian Band [2003] 3 S.C.R. 371
C. Tollefson, "Strategic Lawsuits and Environmental Politics: <i>Daishowa Inc. v. Friends of the Lubicon</i> " (1996) 31(1) J. Canadian Studies 119
Algonquin Wildlands League v. Ontario (MNR) (1996), 21 C.E.L.R. (NS) 102 (Ont. Ct. J., Gen. Div.)
Sierra Club of Canada v. Canada (Minister of Finance) (1998), 13 Admin. L.R. (3d) 280 (Fed. Ct., Trial Div.)
Society for the Preservation of the Englishman River Estuary v. Nanaimo (Regional District) (1999), 28 C.E.L.R. (N.S.) 253 (B.C.S.C.)
Sierra Club of Western Canada v. British Columbia (Attorney General) (1991), 83 D.L.R. (4 <sup>th</sup> ) 708 (B.C.S.C.)
Canadian Parks & Wilderness Society v. Superintendent of Banff National Park (1993), 23 Admin. L.R. (2d) 6 (Fed. Ct., Trial Div.)

Caddy Lake Cottagers Assn. v. Florence-Nora Access Road Inc. (1998), 26 C.E.L.R. (N.S.) 322 (Man. C.A.)
Friends of Point Pleasant Park v. Canada (Attorney General) (2000), 38 C.E.L.R. (N.S.) 45 (Fed. Ct., Trial Div.)
Environmental Assessment
Friends of the Oldman River Society v. Canada (Minister of Transport) (1992), 88 D.L.R (4 <sup>th</sup> ) 1 (S.C.C.)
Canadian Environmental Assessment Act, S.C. 1992, c. 37, ss. 1-8, 11-40
Canadian Environmental Assessment Agency, "Basics of Environmental Assessment", www.ceaa-acee.gc.ca/010/basics_e.htm
Citizens' Mining Council of Newfoundland and Labrador Inc. v. Canada (Minister of Environment) [1999] F.C.J. No. 273 (Fed. Ct., Trial Div.) [Excerpts]
Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans) [2000] 2 F.C. 263 (C.A.)
Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage) [2001] 2 F.C. 461 (C.A.)
Inverhuron & District Ratepayers' Assn. v. Canada (Minister of the Environment) [2001] F.C.J. No. 1008 (C.A.)
Canadian Parks and Wilderness Society v. Canada (Minister of Canadian Heritage) [2003] 4 F.C. 672 (C.A.)947
Sierra Club of Canada v. Canada (Minister of Fisheries and Oceans) [2003] F.C.J. No. 366 (Trial Div.)
A. Levy, "A Review of Environmental Assessment in Ontario" (2002) 11(2) J.E.L.P. 173 [pp. 173, 194-221]
Sutcliffe v. Ontario (Minister of Environment) (2003), 2 C.E.L.R. (3d) 303 (Div. Ct.)
Sutcliffe et al. v. Minister of the Environment (Ontario) et al. [2004] O.J. No. 3473, 72 O.R. (3d) 213

R. v. Ontario Realty Corporation (Unreported)
V "New" Instruments
Command and Control v. Economic Instruments
B. Ackerman and R. Stewart, Reforming Environmental Law" (1985) 37 Stan. L.R. 1333. [pp. 1333-1341]
W. Wagner, "The Triumph of Technology Based Standards" (2000) U. Ill. L.R. 83
R. Revesz and R. Stavins, "Environmental Law and Policy (Draft Chapter)" for A.M. Polinsky and S. Shavell, eds., <i>The Handbook of Law and Economics</i> (Amsterdam: North-Holland/Elsevier Science, 2004) [pp. 50-54]
Carol Rose, "Rethinking Environmental Controls: Management Strategies for Common Resources" (1991) Duke L.J. 1
GOC, Project Green, Moving Forward on Climate Change: A Plan For Honouring our Kyoto Commitment (2005)
R. Posner, <i>Catastrophe: Risk and Response</i> [2004: OUP] (pp.155-165)
Voluntary Mechanisms
K. Harrison, "Voluntarism and Environmental Governance" in E. Parson, ed. <i>Governing the Environment: Persistent Challenges, Uncertain Innovations</i> (Toronto: University of Toronto Press, 2001) (excerpts)
C. Coglianese, "Is Consensus an Appropriate Basis for Regulatory Policy?" in E. Orts and K. Deketelaere, eds., <i>Environmental Contracts: Comparative Approaches to Regulatory Innovation in the United States and Europe</i> (London: Kluwer Law International, 2001)
Green Consumerism
K. Harrison and W. Antweiler, "Toxic Release Inventories and Green Consumerism: Empirical Evidence from Canada" (2003) 36(2) Canadian J. Economics 495 [pp. 495-500, 518-519]
C. Sunstein, <i>Risk and Reason</i> (Cambridge: Cambridge University Press, 2002), Ch. 10: "Tools" [pp. 251-269]

## Marketable Permits

R. Stavins, "Market-Based Environmental Policies: What Can We Learn from U.S. Experience (and Related Research)" (July 2, 2003)
J.R. Nash and R. Revesz, "Markets and Geography: Designing Marketable Permit Schemes to Control Local and Regional Pollutants" (2001) 28 Ecology LQ 569 [pp. 569-82; 614-29]
L. Heinzerling, "Selling Pollution, Forcing Democracy" (1995) 14 Stan.Env.L.J. 300. 1215
K. Wyman, "Why Regulators Turn to Tradeable Permits: A Canadian Case Study" (2002) 52 U.T.L.J. 419 [pp. 419-426, 487-502]
MOE, Technical Report on Emissions Trading Regime1234
X/I XX/mmm m NI om O
VI WHERE NOW?
James Gustave Speth, Red Sky at Morning (Yale University Press 2004) [pp. 191-201]
James Gustave Speth, Red Sky at Morning (Yale University Press 2004) [pp.
James Gustave Speth, Red Sky at Morning (Yale University Press 2004) [pp. 191-201]
James Gustave Speth, Red Sky at Morning (Yale University Press 2004) [pp. 191-201]